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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,235	06/24/2002	H. Randall Craig	HRCM.P-004	6384
21121	7590	02/18/2005	EXAMINER	
OPPEDAHL AND LARSON LLP			MENDOZA, MICHAEL G	
P O BOX 5068			ART UNIT	PAPER NUMBER
DILLON, CO 80435-5068			3731	

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/064,235	CRAIG, H. RANDALL
	<b>Examiner</b>	<b>Art Unit</b>
	Michael G. Mendoza	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 December 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 and 17-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 11-15, 18, 19 and 21-31 is/are allowed.  
 6) Claim(s) 1,4,6-10,17 and 20 is/are rejected.  
 7) Claim(s) 2,3 and 5 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

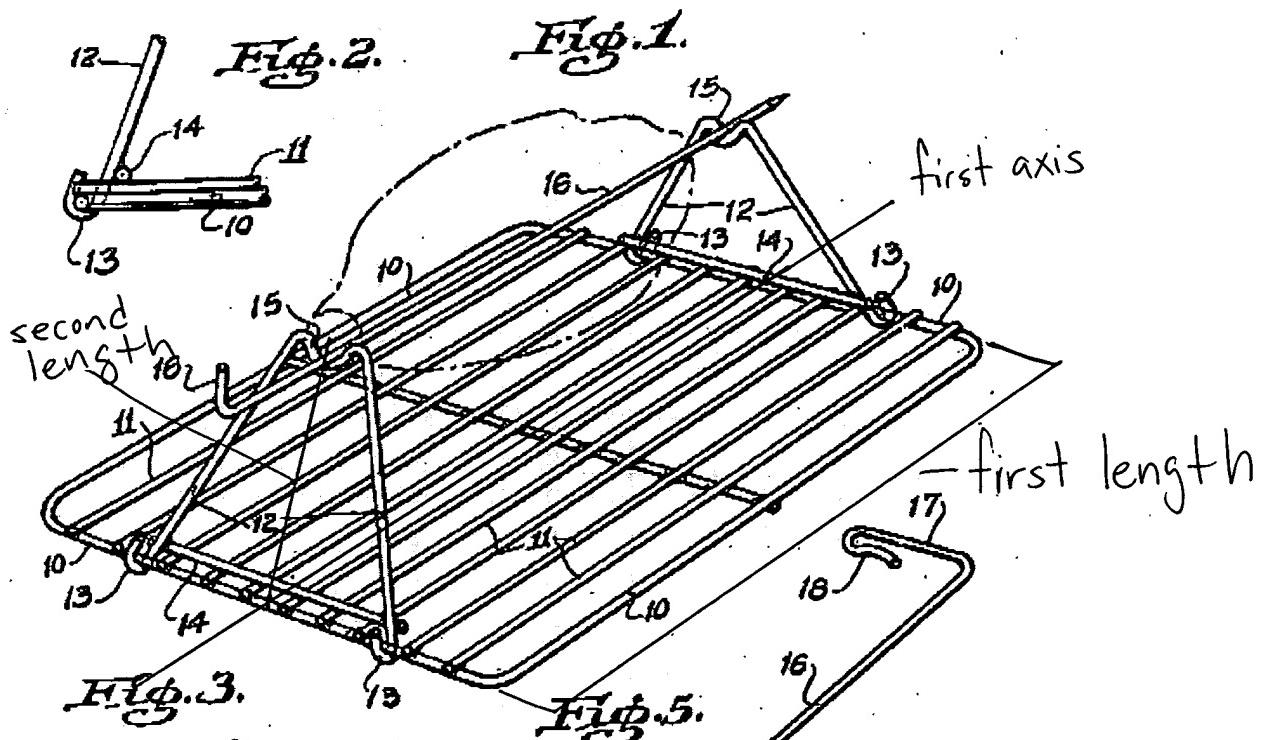
#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Response to Arguments

1. Applicant's arguments filed 7 December 2004 have been fully considered but they are not persuasive. The Applicant argues that the spatulate member of Irwin does not extend along its first axis away from the guide for a distance greater than the second length. However, the spatulate member does extend along its first axis away from the guide from a distance greater than the second length.



2. The Applicant argues that it would not be obvious to make the apparatus of Irwin sterile. In this case the Examiner is using the broadest definition of sterile to be: **aseptic, sterile -- (free of or using methods to keep free of pathological microorganisms; "a **sterile operating area**"; "aseptic surgical instruments"; "aseptic surgical techniques"** (<http://poets.notredame.ac.jp/cgi-bin/wn?cmd=wn&word=sterile>).

3. It is well known to wash/clean articles used for cooking before use. Restaurant dish washers use high temperature water/steam to sterilize dishes. Household dish washing soaps contain antibacterial agents. The apparatus of Irwin is capable of being sterilized and it is also well known to sterilize before use.

***Drawings***

4. The drawings were received on 7 December 2004. These drawings acceptable.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

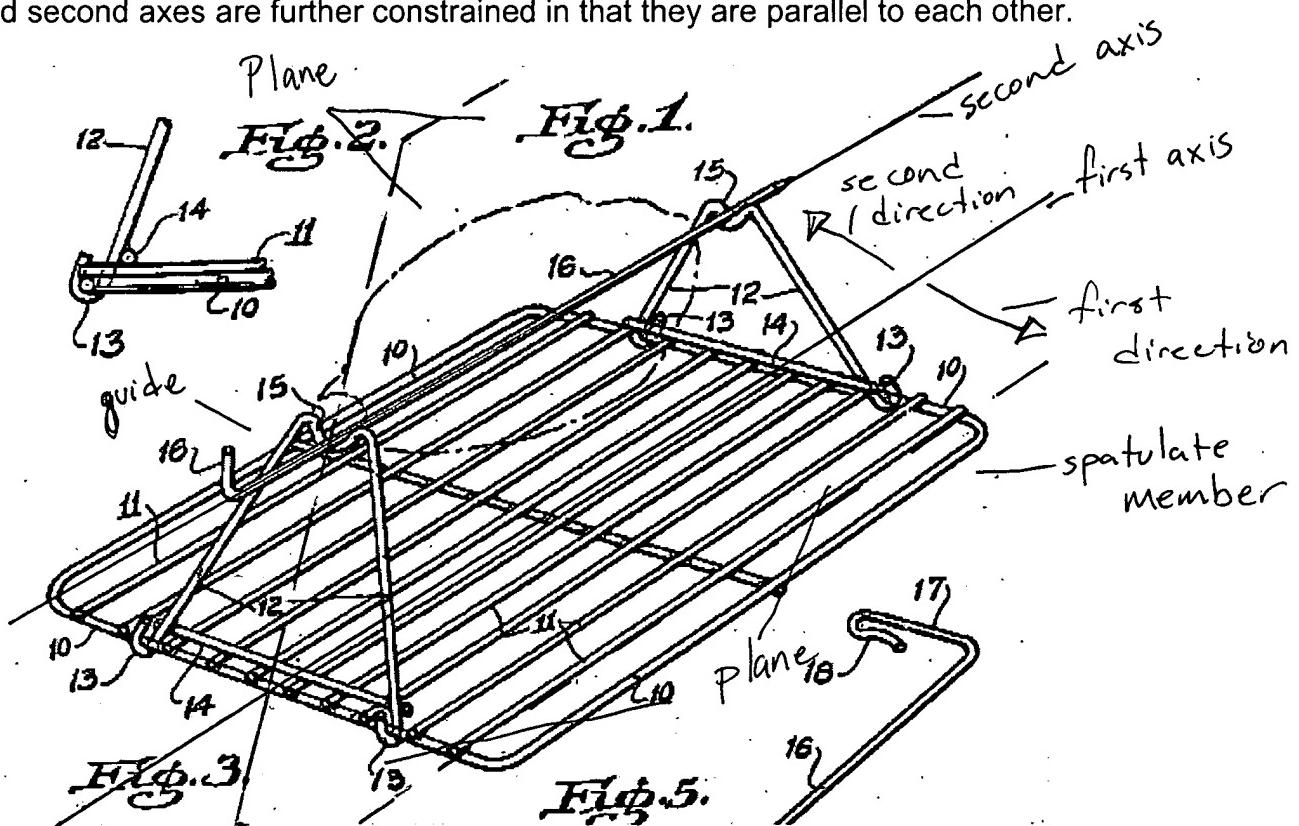
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4, 6, 10, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Irwin 2634674.

7. Irwin teaches an apparatus having a first end and a second end, the first end comprising a spatulate member having a length along a first axis; the second end comprising a guide shaped to receive a cylindrical axle for rotation on a second axis, the guide shaped to constrain the first axis in fixed position relative to the second axis and extend for a second length, the first and second axes constrained to lie within a single plane; the spatulate member extending in a first direction and a second direction from the first axis, the first direction and second direction being on opposite sides of the plane; the spatulate member extending along its first axis away from the guide for a distance greater than the second length; wherein the guide comprises two member

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each extending toward the second axis from the first axis, each of the two member having a hole shaped to receive the cylindrical axle; wherein the spatulate member is symmetric relative to the first axis; further characterized as made of metal; wherein the first and second axes are further constrained in that they are parallel to each other.



#### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin.

10. As to claim 7, Irwin teaches an apparatus made of metal. It should be noted that Irwin fails to specifically teach where the apparatus is sterile. However, the metal of Irwin is fully capable of being made sterile.

11. As to claim 8, Irwin fails to teach wherein the apparatus is surrounded by a wrapper. However, it is well known to surround a product in a box or a plastic wrapping material prior to use or being sold. Therefore, would have been obvious to one having ordinary skill in the art at the time the invention was made to wrap the apparatus of Irwin to protect it from damage and keep it in "new" condition before it is used.

12. As to claim 9, Irwin teaches the claimed invention except for the use of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin* 125 USPQ 416.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Allowable Subject Matter***

14. Claims 11-15, 18, 19, 21-31 are allowable over the prior art of record.
15. Claims 2, 3, and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (571) 272-4694. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MM

  
GLENN K. DAWSON  
PRIMARY EXAMINER